

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
USCOC Virginia RSA #3, Inc.)	
USCOC Virginia RSA #2, Inc.)	
Virginia RSA #4, Inc.)	
Virginia RSA #7, Inc.)	
Ohio State Cellular Telephone Co., Inc.)	
Charlottesville Cellular Partnership)	
)	
For Designation as an Eligible)	
Telecommunications Carrier)	
In the Commonwealth of Virginia)	

To: Wireline Competition Bureau

REPLY COMMENTS

USCOC of Virginia RSA #3, Inc., USCOC of Virginia RSA #2, Inc., Virginia RSA #4, Inc., Virginia RSA #7, Inc. Ohio State Cellular Telephone Company, Inc. and Charlottesville Cellular Partnership (collectively, “U.S. Cellular”), by its counsel, hereby submits its Reply Comments pursuant to the Public Notice issued by the Wireline Competition Bureau (“Bureau”) seeking comment on U.S. Cellular’s petition for designation as an eligible telecommunications carrier (“ETC”) in the Commonwealth of Virginia (“Petition”).¹ The NTELOS Telephone Companies (“NTELOS”), TDS Telecommunications Corp. (“TDS”), Verizon, and the Cellular Telecommunications and Internet Association (“CTIA”) filed comments. As explained below, U.S. Cellular satisfies the criteria for designation as an ETC throughout its requested service

¹ See Public Notice, *Parties are Invited to Comment on Petitions for Eligible Telecommunications Carrier Designations, Pleading Cycle Established*, DA 04-1445 (rel. May 21, 2004)(“Public Notice”).

area, and no commenter has provided any reason compelling delay or denial of U.S. Cellular's Petition.

I. CALLS FOR DELAY HAVE NO MERIT AND MUST BE REJECTED

Both NTELOS and TDS wrongly suggest that ongoing proceedings to consider changes to the Commission's ETC-related rules warrant a suspension of all competitive ETC designations in rural areas. NTELOS Comments at p. 5; TDS Comments at p. 7. Neither commenter cites a single instance in which the Commission declined to apply existing rules and policies on the mere premise that those rules and policies may one day change.

As an initial matter, NTELOS's assertion that it would be "unwise to designate additional ETCs in study areas served by rural ILECs" at this time is rather odd – indeed, self-defeating – given that its own wireless affiliates have applied for ETC status in areas of Virginia that include areas served by rural ILECs.² NTELOS's affiliates requested ETC designation in an area that includes the Bland and Wytheville wire centers of Sprint/United Telephone Company and the Bluefield and Rocky Gap wire centers of Verizon South f/k/a GTE South, both of which are rural ILECs. Notwithstanding NTELOS's apparent conviction that no further competitive ETC designations should be made in areas served by rural ILECs, there is no indication that NTELOS's affiliates intend to withdraw from the rural ILEC areas in which they have applied for ETC status.

As a justification for suspending designations, TDS points to the fact that the Federal-State Joint Board on Universal Service ("Joint Board") has recommended permissive guidelines for states to follow in evaluating ETC petitions. However, those guidelines would merely advise

² Application of Virginia PCS Alliance, L.C. and Richmond 20 MHz, LLC (d/b/a NTELOS) for Designation as Eligible Telecommunications Carriers in the Commonwealth of Virginia (filed Nov. 10, 2003, supplemented March 14, 2004).

states to apply essentially the same framework that the FCC applied in its *Virginia Cellular* and *Highland Cellular* orders.³ Thus, for example, the possible adoption of a guideline urging states to consider whether the petitioner is willing and able to step in as the sole ETC if ILEC withdraws (pp. 2-3) merely enunciates the standard that the FCC has consistently applied for several years.⁴ The FCC already applies a rigorous, fact-specific analysis to evaluate the public interest, and there is no reason to believe the analysis will change significantly as a result of the Joint Board's recommendations. Moreover, TDS's assertion that U.S. Cellular may claim to be "grandfathered" under the old rules (at pp. 6-7) is completely irrelevant to U.S. Cellular's qualifications under the current rules. Whether any competitive ETC can be "grandfathered" is an issue properly addressed in the ongoing rulemaking proceeding in CC Docket 96-45.

U.S. Cellular could not agree more with TDS's contention that the FCC "is well-positioned to address the important issues concerning the ETC designation process in a comprehensive rulemaking proceeding in which all interested parties have an opportunity to participate, rather than on a piecemeal basis in connection with specific petitions for ETC designation." TDS Comments at p. 4. However, as TDS notes, the FCC has made clear its intent to continue processing competitive ETC petitions while the possibility of rule changes is being considered. *Id.* at p. 7. TDS's assertion that conditions have "changed" since *Virginia Cellular* and *Highland Cellular* is simply false. The FCC released the *Highland Cellular* order **after** the release of the *Recommended Decision*, and the FCC first referred the issues to the Joint

³ *Virginia Cellular, LLC*, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*"); *Highland Cellular, Inc.*, FCC 04-37 (rel. Apr. 12, 2004) ("*Highland Cellular*").

⁴ See, e.g., *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 56 (2000) ("*Western Wireless*"), Order on Reconsideration, 16 FCC Rcd 19144; *Guam Cellular and Paging, Inc. d/b/a Guamcell Communications*, CC Docket No. 96-45, DA 02-174 (C.C.B. rel. Jan. 25, 2002) at ¶ 17 ("*Guamcell*"); *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, 16 FCC Rcd 18133, 18139 (2001) ("*Pine Ridge*").

Board in November 2002. Numerous competitive ETC designations have been made since that time. A decision to put all ETC petitions on hold based on the possibility that the applicable rules will be changed would be “similar to a judge dismissing a complaint based on a federal statute because he has been informed that Congress is conducting hearings on whether to change the statute.” *AT&T Co. v. FCC*, 978 F.2d 727, 732 (D.C. Cir. 1992). Clearly, there will always be the possibility that a given rule will be changed. The only lawful response is to apply existing rules and policies until those changes occur.

II. U.S. CELLULAR HAS AMPLY DEMONSTRATED THAT IT IS QUALIFIED TO BE AN ETC AND THAT ITS DESIGNATION IS IN THE PUBLIC INTEREST

A. U.S. Cellular Has Clearly Met the Requirements Regarding State Jurisdiction and Offering the Supported Services.

In its comments, CTIA correctly points out that the Virginia State Corporation Commission previously provided an order stating that it did not have jurisdiction to consider a CMRS carrier’s petition for ETC status. *See* CTIA Comments at pp. 2-3. Because the state commission has provided an “affirmative statement” that CMRS carriers such as U.S. Cellular are not subject to the state’s jurisdiction for ETC designation purposes, the FCC has jurisdiction to consider U.S. Cellular’s Petition under Section 214(e)(6) of the Act. No commenter disputed U.S. Cellular’s showing in this regard.

Similarly, no commenter disputed U.S. Cellular’s capability and commitment to offer and advertise the supported services listed in Section 54.101 of the FCC’s rules. Accordingly, the Commission should find that U.S. Cellular satisfies these elements of the ETC designation showing.

B. U.S. Cellular Has Made Clear and Verifiable Commitments to Provide Service Upon Reasonable Request and to Build Out Its Network.

In the Petition, U.S. Cellular committed to provide service to consumers “upon reasonable request.” Petition at p. 3. This refers to the six-step process for provisioning service that was approved by the FCC in its orders designating Virginia Cellular and Highland Cellular as ETCs.⁵ Identical or near-identical commitments have been approved by several state commissions as well.⁶ Accordingly, there can be no doubt that U.S. Cellular’s commitment to respond to consumer requests satisfies all applicable requirements. No commenter challenged U.S. Cellular’s showing in this regard.

Just last week, the Oregon Public Utility Commission designated an affiliate of U.S. Cellular as an ETC in Oregon, including areas served by rural ILECs. Following full evidentiary hearing, including supplemental briefing on the effect of the FCC’s Virginia Cellular and Highland Cellular decisions, the commission issued a lengthy decision covering all of the issues. Notably, the Commission accepted U.S. Cellular’s commitment to serve all consumers upon reasonable request, the six step commitment for provisioning service to requesting customers, and virtually every other issue in play in the instant proceeding. A copy is attached hereto for the Commission’s reference.

Although U.S. Cellular’s commitment is ultimately to use support only for the “provision, maintenance, and upgrading of facilities and services,” U.S. Cellular has committed to build new cell sites consistent with the commitments set forth in *Virginia Cellular* to extend or improve service to consumers in rural areas.⁷ Similar to Virginia Cellular’s plans, U.S.

⁵ *Virginia Cellular, supra; Highland Cellular, supra.*

⁶ See, e.g., Alaska Digitel, L.L.C. Order Granting Eligible Telecommunications Carrier Status and Requiring Filings, Docket U-02-39, Order No. 10 (August 28, 2003); Smith Bagley, Inc., Case No. 03-00246-UT, Recommended Decision of the Hearing Examiner (N.M. Pub. Reg. Comm’n, June 14, 2004); RCC Minnesota, Inc., Docket No. UM-1083 (Or. PUC, June 24, 2004); Easterbrooke Cellular Corp., Case No. 02-1118-T-PC (W.V. PSC, May 29, 2003) (effective June 22, 2003).

⁷ See *Virginia Cellular, supra*, 19 FCC Rcd at 1571. The parameters of U.S. Cellular’s proposed construction are in

Cellular's plans "may evolve over time as it responds to consumer demand."⁸ TDS's professed concern that U.S. Cellular will not use its high-cost support to "improve service to rural areas such as that served by New Castle" (at p. 9) is unfounded. U.S. Cellular has committed to respond to all reasonable requests for service, throughout its proposed ETC service area. Because U.S. Cellular only receives support for customers it wins and retains, it is in rural, high-cost areas that U.S. Cellular has the greatest incentive to extend and improve service.

Contrary to TDS's assertion, *Virginia Cellular* does not require an ETC petitioner to "commit specifically to expand and improve its network to residences that are not currently served by the wireline network". TDS Comments at p. 8. TDS cites no statute, rule or order that requires a carrier to construct network facilities to an area where no specific request for service has come from. Nor was Virginia Cellular required to demonstrate that its build-out plan would provide coverage to areas lacking wireline service. Virginia Cellular properly indicated its readiness to respond to requests from customers to the extent they may not be reached by wireline networks.⁹ As the Commission has recognized, wireless service offers inherent advantages over wireline.¹⁰ Thus, a wireless ETC applicant need not make a special showing that wireline service is "inadequate".

development, and U.S. Cellular will file a supplement containing locations and timeframes within the next several days.

⁸ *Id.*

⁹ *Id.* at 1576, n.88.

¹⁰ *Id.* at 1576 ("For example, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. Virginia Cellular also submits that, because its local calling area is larger than those of the incumbent local exchange carriers it competes against, Virginia Cellular's customers will be subject to fewer toll charges.")(footnote omitted). *See also* Separate Statement of Chairman Michael K. Powell ("we recognize the unique value that mobile services provide to rural consumers").

C. ILEC Commenters Have Failed to Demonstrate that Harm Would Result From U.S. Cellular’s Designation.

The commenters do not legitimately question U.S. Cellular’s strong commitments that satisfy *Virginia Cellular* and demonstrate that the public interest would be served by a grant of its Petition. Similarly, no commenter has made any supported argument that consumers would be harmed by U.S. Cellular’s designation.

U.S. Cellular’s designation would have only a minimal impact on the size of the Universal Service Fund, *see* Petition at p. 11, and no commenter disputes this contention. Rather, the ILEC commenters’ concern appears to be with the cumulative effect of designating all potential competitive ETCs throughout the country. In response to NTELOS’s and TDS’s professed concerns about the sustainability of the high-cost fund, U.S. Cellular has no quarrel with the notion that, all else being equal, a smaller fund is better than a larger fund. The problem is with the suggestion by NTELOS and TDS that the way to control fund growth is to curtail competitive ETC designations. This position ignores the fact that rural wireline ILECs continue to receive the vast majority of high-cost universal service funds and that the size of the fund has increased significantly because the rural ILECs requested (and were granted) a higher level of funding from the FCC in 2001.¹¹ The additional funding received by rural ILECs through the “modified embedded cost” funding mechanism far outstrips any impact on the fund caused by CETCs generally or wireless CETCs specifically.

Moreover, there is simply no merit to TDS’s assertion that continued competitive ETC designations would “force the Commission later to take more aggressive steps” to curb fund

¹¹ *See Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 (2001) (“*Fourteenth Report and Order*”)(“we estimate that the modified embedded cost mechanism will result in an increase in rural carrier support of approximately \$1.26 billion over the five-year period”).

growth. TDS Comments at p. 5. There are many reasons for fund growth that have nothing to do with competitive ETCs (*e.g.*, ILEC study area waivers, inefficient investments by rural wireline monopolies, the highly-publicized irregularities in the Schools and Libraries Program), and the FCC is acting on numerous fronts to control that growth – whether through changes in the USF contribution methodology or the way in which all ETCs receive support. With those ongoing proceedings, the FCC is more than adequately equipped to manage fund growth. Meanwhile, the FCC must fulfill its statutory mandate to designate qualified carriers as ETCs so as to advance universal service and promote competitive entry in accordance with the 1996 Act.

III. CONCLUSION

For the reasons stated above, U.S. Cellular requests that the Commission promptly grant its Petition.

Respectfully submitted,

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USCOC of Virginia RSA #2, Inc.
Virginia RSA #4, Inc.
Virginia RSA #7, Inc.
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July 6, 2004

CERTIFICATE OF SERVICE

I, Kimberly Verven, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 6th day of July, 2004, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *Reply Comments* filed today to the following:

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